

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 24704 of 2006(N)

E.A.143/06 IN EP.224/05 IN OS.79/2004 of MUNSIFF-MAGISTRATE'S
COURT, PAYYOLI
.....

PETITIONER:

PATINHARE VARIYATH NARAYANA VARIER,
S/O.KUNHUNNI VARIER, 61 YEARS, PENSIONER,
VANMUKAM AMSOM, CHINGAPURAM DESOM, KOYILANDY
TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENTS:

1. KALLERI K.BALAN, S/O.KUNHIKANNAN,
52 YEARS, BUSINESS, PURAKKAD AMSOM,
KOZHIPPURAM DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.
2. THE SECRETARY, THIKKOTI GRAMA
PANCHAYAT, P.O.THICKOTI, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

R1 BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYASHREE PRIYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.24704/06

APPENDIX

PETITIONER'S EXTs:

EXT.P1 – TRUE COPY OF DECREE IN OS.79/04 WITH ANNEXURE EXT.C2 COMMN. REPORT ON THE FILE OF MUNSIFF, PAYYOLI DT.31.10.05.

EXT.P2 – TRUE COPY OF EP.224/05 IN O.S.79/04 OF MUNSIFF, PAYYOLI.

EXT.P3 – TRUE COPY OF COMMN. REPORT BY ADV.COMMR. DT.4.3.06 IN EXT.P2

EXT.P4 – TRUE COPY OF REPORT BY ASST. ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, DIST. OFFICE, KOZHIKODE DT.3.4.06 FILED IN DO.

EXT.P5 – TRUE COPY OF AFFIDAVIT IN SUPPORT OF E.A.143/06 DT.12.4.06 IN THE ABOVE EP.

EXT.P6 – TRUE COPY OF PETITION EA.143/06 IN THE ABOVE EP.

EXT.P7 – TRUE COPY OF ORDER IN EA.143/06 IN EP.224/05 IN OS.79/04.

RESPONDENTS' EXTs:

EXT.R1(A) – TRUE COPY OF PROCEEDINGS DT.16.9.04 ISSUED BY DIST. MEDICAL OFFICER, KOZHIKODE.

EXT.R1(B) – TRUE COPY OF THE REPORT DT.11.8.05 ISSUED BY THE ASST. ENVIRONMENTAL ENGINEER.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....
W.P.(C)No.24704 OF 2006
.....

DATED THIS THE 13th JULY, 2007

J U D G M E N T

Ext.P7 order passed by the learned Munsiff-Magistrate on an application submitted by the decree-holder for deputation of a fresh commission to substantiate the allegation that the decree is being violated by the 1st respondent is under challenge in this Writ Petition.

2. Heard Sri.R.Parthasarathy, learned counsel for the petitioner and Sri.K.Lakshminarayanan, learned counsel for the 1st respondent.

3. Notwithstanding the fervent submissions of Mr.Parthasarathy who invited my attention to the various documents placed on record, particularly the affidavit in support of Ext.P6 wherein it is contended that the trial run, on the basis of which only Ext.C2 report relied on by the learned Munsiff-Magistrate was prepared, was conducted without notice to the petitioner, I am unable to say that Ext.P7 is vitiated to the extent of justifying interference by this Court under its supervisory jurisdiction. The prayer in the E.A. was that a fresh commission be issued to a Sound Engineer available from the National Institute of Technology, Chathamangalam together with a medical professional from the Medical College, Kozhikode who will be able to report about the ill-effects of the air and sound pollution, for adjudication of the

rights of the petitioner. The court below has noticed, and rightly so in my view, that being an execution court, it did not have the power to go beyond the terms of the decree which was one on consent.

4. Under these circumstances, I do not find any warrant for setting aside Ext.P7. At the same time, it appears to me that there is some legitimacy in the grievance of the petitioner that the operation of the Flour Mill by the 1st respondent is making life very uncomfortable for him. But then, this is a matter which should be considered by the authorities of the Pollution Control Board who have now issued consent. I am informed that the consent issued to the 1st respondent itself is subject-matter of another Writ Petition before this Court. It is open to the petitioner to voice all his grievances in that Writ Petition.

Subject to the above observations, the Writ Petition is dismissed.

(PIUS C.KURIAKOSE, JUDGE)

tgl

WP(C)N0.24704/06

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